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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

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No. 1107

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GREENHOUSE BROS. & FINKELSTEIN, INC., A NEW  
YORK CORPORATION,

*Petitioner,*

*vs.*

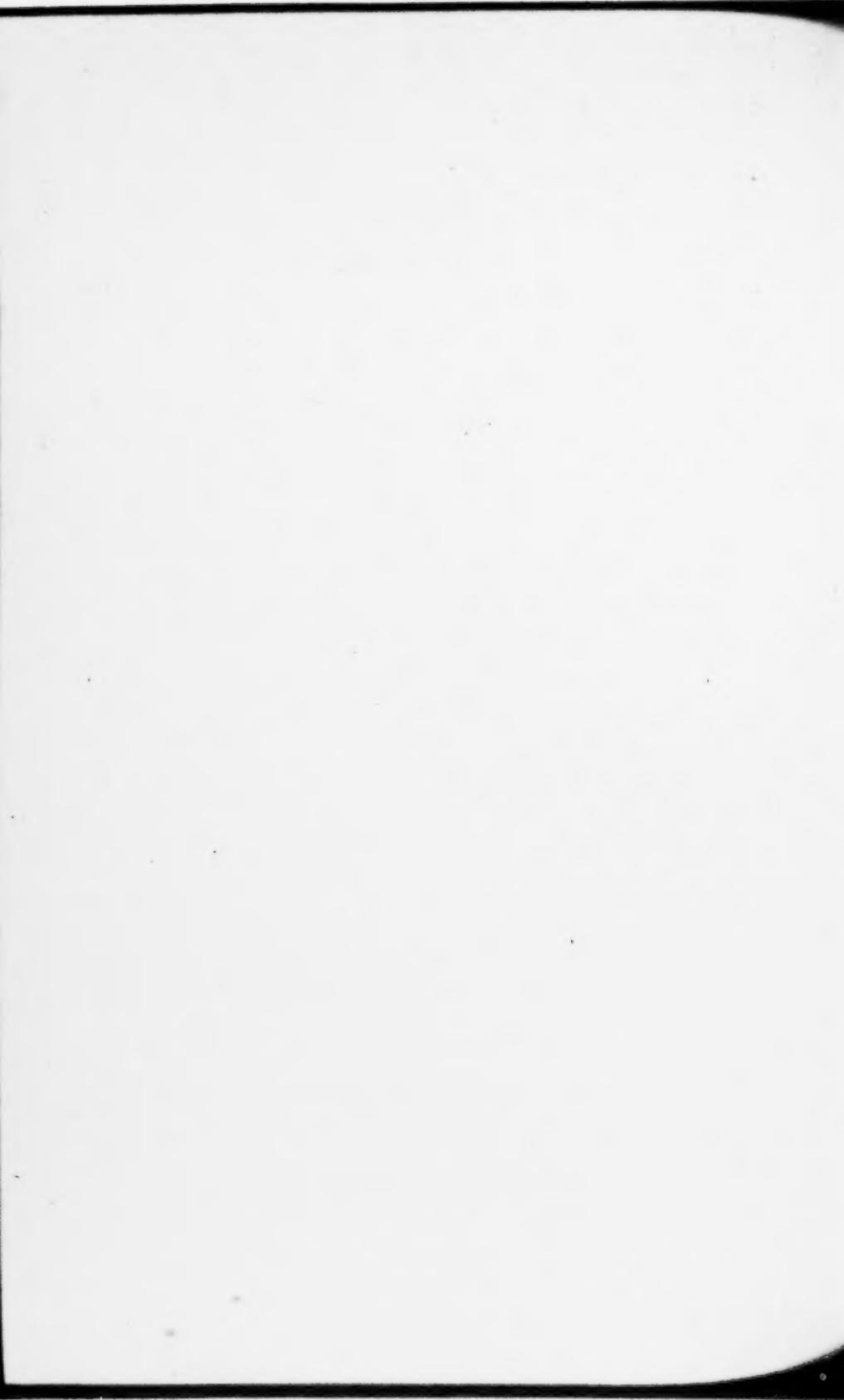
RECONSTRUCTION FINANCE CORPORATION

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PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES EMERGENCY COURT OF AP-  
PEALS.

---

EDWARD SCHOENECK,  
JAMES A. MURRAY,  
WILLIAM D. MURRAY,  
*Counsel for Petitioner.*



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

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**No. 1107**

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GREENHOUSE BROS. & FINKELSTEIN, INC., A NEW  
YORK CORPORATION,

*Petitioner,*

*vs.*

RECONSTRUCTION FINANCE CORPORATION,

*Respondent*

---

**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES EMERGENCY COURT OF AP-  
PEALS.**

---

*To the Honorable Chief Justice and Associate Justices of  
the Supreme Court of the United States:*

Petitioner, Greenhouse Bros. & Finkelstein, Inc., prays  
that a writ of certiorari issue to review the judgment of  
the United States Emergency Court of Appeals in the above  
case.

**Opinion Below**

The opinion of the Court below, which was filed February  
5, 1947, is not yet reported. It appears at R. — (Transcript  
of the record, pages 12-18).

### Basis of Jurisdiction

The judgment of the court below was entered February 5, 1947. The jurisdiction of this Court is invoked under Section 204 (e) of the Emergency Price Control Act of 1942, 56 Stat. 31, and under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 938.

### Summary Statement

This case arises out of a determination by the respondent that, under the provisions of Amendment No. 2 (9 F. R. 1820) to Regulation No. 3 (8 F. R. 10826) issued by Defense Supplies Corporation, petitioner was ineligible for the special subsidy of 80 cents per cwt. established for non-processing slaughterers of cattle by the amendment.<sup>1</sup>

Amendment No. 2 was issued October 30, 1943, pursuant to a Directive of the Economic Stabilization Director on October 25, 1943 (8 F. R. 14641). It established the special subsidy and set forth certain conditions of eligibility. The conditions were these:<sup>2</sup>

*“Sec. 7003.14 Extra compensation for non-processing Slaughterers of beef—(a) Definitions. (1) ‘Non-processing slaughterer of beef’ means an unaffiliated slaughterer as hereinafter defined who during six consecutive months of 1942, sold, and who currently sells,*

*“98% or more, measured in dressed carcass weight, of the total beef produced from cattle slaughtered by*

---

<sup>1</sup> Defense Supplies Corporation, a wholly owned subsidiary of Reconstruction Finance Corporation (6 F. R. 2972), was dissolved, and its functions transferred to Reconstruction Finance Corporation, by Public Law 109, 79th Cong., 1st Sess., approved June 30, 1945 (59 Stat. 310).

<sup>2</sup> Regulation No. 3, Revised, of the Defense Supplies Corporation, which was issued and effective on January 19, 1945, contains the same definitions (10 F. R. 4241).

him in all his establishments, in the form of carcasses, wholesale cuts, boneless beef or ground beef.

"(2) 'Unaffiliated slaughterer' means a slaughterer who does not own or control a processor or purveyor of meat, and who is now owned or controlled by a processor or purveyor of meat. 'Unaffiliated slaughterer' shall not include any institution, representative or agency of Federal, State or local governments.

"(3) 'Processor or purveyor of meat' means a person who processes fresh beef or sells or dispenses fresh or processed meat or products containing meat, at wholesale or at retail, or in a hotel, restaurant or other eating establishment.

"(4) 'Own or control' means to own or control directly or indirectly a partnership equity or in excess of ten percent of any class of outstanding stock or to have made loans or advances in excess of five percent of the other person's monthly sales."

Petitioner, a New York corporation, was incorporated in March, 1940, and is located in East Syracuse, New York (T. p. 6). It is engaged in business as a meat slaughterer and prepares and sells wholesale cuts of beef (T. p. 6).

Petitioner claimed and was paid the special subsidy for several months following the effective date of the amendment, November 1, 1943 (T. pp. 3, 14). On August 1, 1944, however, Defense Supplies Corporation refused further payments of the subsidy to petitioner, taking the position that petitioner was not an unaffiliated slaughterer within the meaning of the amendment (T. pp. 3-4, 14). Petitioner was directed to repay the payments theretofore received by it (T. pp. 3, 14). The Price Administrator subsequently relieved petitioner of this obligation pursuant to the authority of Section 2 of Public Law 88, approved June 23, 1945, 59 Stat. 261 (T. p. 14). This relief was authorized in

cases where a slaughterer had received special subsidy payments in good faith and in the reasonable belief that he was eligible and where it would have been inequitable to require repayment from him (T. pp. 3, 14).

Under date of August 22, 1946, petitioner filed a protest with respondent's Board of Directors challenging the validity of Defense Supplies Corporation's determination that petitioner was an affiliated slaughterer and ineligible for the subsidy (T. p. 3-6, 14). The protest stated that petitioner was not "in truth and in law" an affiliated slaughterer under the amendment and regulation (T. pp. 5), and asked the Board to review the administrative interpretation to the contrary and to declare petitioner eligible for the subsidy (T. p. 6).

The Board denied petitioner's protest by letter dated September 17, 1946 (T. pp. 1-3). The denial was made without a hearing, without the Board's requesting evidence, and without further proceedings of any sort (T. p. 15). The determination of the Board was as follows (T. pp. 2-3):

“I. That said Regulation is in all respects valid;

II. That Renee Packing Co., Inc., is a processor or purveyor of meat;

III. That Greenhouse Bros. & Finkelstein, Inc. and Renee Packing Co., Inc. were at all times here involved affiliated;

IV. That Greenhouse Bros. & Finkelstein, Inc. is owned and controlled by the following officers and stockholders:

Officers:

President.....	Paul Greenhouse
Vice President.....	Nathan Finkelstein
Sec. & Treas.....	William Greenhouse

## Stockholders:

Total Shares Issued.....	614
William Greenhouse.....	144 shares
Paul Greenhouse.....	129½ shares
Nathan Finkelstein.....	134½ shares
Rose Greenhouse.....	60 shares
Estabel Greenhouse.....	74 shares
Fannie Finkelstein.....	70 shares
Eli Gingold (atty).....	1 share
Jessie Hecker.....	1 share
	_____
Total .....	614

V. That Renee Packing Co., Inc. is owned and controlled by the following officers and stockholders:

## Officers:

President.....	Eli Gingold
1st Vice Pres.....	William Greenhouse
2nd Vice Pres.....	Nathan Finkelstein
Sec. & Treas.....	Paul Greenhouse

## Stockholders:

Total Shares Issued.....	695
William Greenhouse.....	231½
Paul Greenhouse.....	231½
Nathan Finkelstein.....	231½
	_____
Total .....	695

VI. That such common ownership and control constitute affiliation within the terms of said Regulation, disqualifying Greenhouse Bros. & Finkelstein, Inc., from eligibility to receive the extra compensation of eight-tenths of one cent per pound."

A complaint against this determination was filed in the court below on October 18, 1946 (T. p. 6). After argument on January 14, 1947, the court below filed its opinion and

ordered the complaint dismissed on February 5, 1947 (T. pp. 12-18). A judgment to that effect was entered the same day (T. p. 18).

The Board's findings numbered IV and V (T. p. 2), which identify the officers and stockholders of the Renee Packing Co., Inc., and of petitioner, are correct. It is to be noted that neither corporation owns stock in the other.

The Board's determination, which was approved by the court below, rested upon the sole ground that Wm. Greenhouse, Paul Greenhouse, and Nathan Finkelstein own all of the stock and are officers of the Renee Packing Co., Inc., and also own approximately two-thirds of the stock and are officers of petitioner (T. p. 2). From this fact, it was concluded that petitioner owned and controlled the Renee Packing Co., Inc., or was owned and controlled by the latter and that therefore the two were affiliated within the meaning of the amendment (T. pp. 2-3). No evidence was heard concerning the actual relationships between the two corporations. No finding that one of the two actually owned or controlled the other, or that the two were in fact affiliated, was made. This was despite the authority of the Board under Sec. 203 (a) of the Emergency Price Control Act of 1942<sup>3</sup> to hold a hearing or provide an opportunity for the presentation of further evidence.

Except for the alleged affiliation found by respondent, petitioner is eligible for the special subsidy in all respects.

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<sup>3</sup> January 30, 1942, c. 26, Title II, Sec. 203, 56 Stat. 31, as amended June 30, 1944, c. 325, Title I, Sec. 106, 58 Stat. 638. Subsection (a) in part provides: "Within a reasonable time after the filing of any protest under this subsection, . . . the administrator shall either grant or deny such protest in whole or in part, notice such protest for hearing, or provide an opportunity to present further evidence in connection therewith".

This subsection applies to the instant matters. *Illinois Packing Co. v. Bowles*, Em. App. 1945, 147 F. 2d 554.

### Questions Presented

1. Does a corporate slaughterer own, or is it owned by, a corporate processor, within the meaning of Amendment No. 2, because of the single fact that the three individuals who own all the stock and are officers of the processor also own approximately two-thirds of the stock and are officers of the slaughterer?
2. Does a corporate slaughterer control, or is it controlled by, a corporate processor, within the meaning of Amendment No. 2, because of the single fact that the three individuals who own all the stock and are officers of the processor also own approximately two-thirds of the stock and are officers of the slaughterer?
3. In the absence of a statutory mandate, may an administrative body such as respondent draw a conclusive presumption, which can not be rebutted, that a corporate slaughterer owns or controls, or is owned or controlled by, a corporate processor from the single fact that the three individuals who own all the stock and are officers of the processor also own approximately two-thirds of the stock and are officers of the slaughterer?
4. In the absence of any finding of fact that the corporate entity is being used as a subterfuge to defeat public convenience, justify wrong, or perpetrate a fraud, and without statutory mandate, may an administrative body, such as respondent, disregard the corporate entity and make the corporation the owner or controller of its stockholder's property?
5. If respondent's interpretation and application of the definitions of Amendment No. 2, which deprive petitioner of the benefits of the special subsidy, are correct, are the definitions as so interpreted and applied in this case un-

constitutional in that they are arbitrary, capricious and unreasonable and in that they deprive petitioner of its property without due process of law in violation of the Fifth Amendment of the Constitution of the United States of America?

#### **Reasons Relied upon for the Allowance of the Writ**

1. This case presents an important question of Federal, administrative law which has not been, but should be, settled by this Court.

The corporation is a vital element in our national economy. The administrative body has become an increasingly important element in our governmental system, and its regulations have reached far out into the conduct of business affairs. Inevitably, the corporation and the administrative body have come into conflict. Out of that conflict, these transcendent questions have again and again arisen: What are the points beyond which administrative bodies can not go in directing and determining the legal consequences of corporate activities; what limits are upon the administrative power to abrogate rights fixed by settled law and hitherto only changeable by proper legislative action?

So long as these questions remain without clear answers, there is the type of uncertainty and dissatisfaction which is not only harmful to business but also to the efficient administration of government. This case contains an important opportunity for this Court to lay down a clear rule for the guidance of both business and government in one aspect of their inter-relations. Here we have an administrative body disregarding the corporate entities involved and ruling that one corporation owns and controls another because of the single fact that some of the stockholders and officers of one are stockholders and officers of the other. And this in applying a regulation that does not

in terms lay down such a measurement of ownership and control.

Counsel is unable to discover that this Court has passed directly upon the questions here presented. Its importance in every day administrative law is illustrated by *Ziffin, Inc., v. United States*, 318 U. S. 73, 63 S. Ct. 465, where the decision of this Court was upon grounds that made it unnecessary to pass upon an essentially similar question.

2. The decision below is in conflict with the applicable decisions of this Court.

Since the court below disregarded the corporate entities of the petitioner and the Renee Packing Co., Inc., without a finding of exceptional circumstances or that one in fact owned or controlled the other, its decision is in conflict with the rule that a corporation is an entity separate and distinct from its stockholders long settled by the decisions of this Court.

*Chicago, M. & St. P. Ry. et al. v. Minneapolis Civic and Commerce Ass'n.*, 247 U. S. 490, 38 S. Ct. 553;

*Corsicana National Bank v. Johnson*, 251 U. S. 68, 40 S. Ct. 82;

*Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U. S. 333, 45 S. Ct. 250;

*New Colonial Ice Co. v. Helvering*, 292 U. S. 435, 54 S. Ct. 788;

*United States v. Elgin, J. & E. Ry. Co.*, 298 U. S. 492, 56 S. Ct. 841;

*Schenley Distillers Corporation v. United States*, 66 S. Ct. 247;

*Boutell v. Walling*, 66 S. Ct. 631.

In the *Elgin* case, at page 498, this Court said:

"Mere ownership by the United States Steel Corporation of all the shares of both appellee and producing subsidiary was not enough to show that products made or owned by the latter were articles or commodities produced by the former, or under its authority, or which it owned in whole or in part, or in which it had an interest, direct or indirect, and was forbidden to transport by the commodities clause."

Again in the *Elgin* case, at page 501, it was said by this Court:

"Considering former rulings, it is impossible for us now to declare as a matter of law that every company all of whose shares are owned by a holding company necessarily becomes an agent, instrumentality, or department of the latter. Whether such intimate relation exists is a question of fact to be determined upon evidence."

In its opinion, the court below said (T. p. 18):

"Another way of putting it, quite consistent with the language of the subsidy regulation, is to say that Renee Packing Co., Inc., a processor of meat, through its officers and sole stockholders, . . . 'indirectly' controls over fifty per cent of the outstanding stock of complainant."

The court below found indirect control arising solely out of the identity of the stockholders and officers of the petitioner and the Renee Packing Co. No evidence to determine the fact of the relationship between the two corporations was ever taken. No finding of exceptional circumstances warranting the piercing of the corporate veils was ever made. *Boutell v. Walling, supra.* It is submitted,

therefore, that the decision below is in conflict with the decisions of this Court.

3. The decision of the court below is in conflict with another of its own decisions.

On the same day it handed down its decision in this case, February 5, 1947, the court below filed its opinion in *Maloney Packing Company v. Reconstruction Finance Corporation*.<sup>4</sup> The *Maloney* case presented the situation of a husband's being the sole stockholder and president of the corporate slaughterer and his wife's being the sole stockholder of the corporate processor. Respondent had ruled such stockholding constituted affiliation between the two corporations. The court below set aside respondent's ruling, saying in part (at page 3 of the opinion):

"To reach the conclusion that *Maloney* Packing Company (through its president and sole stockholder) indirectly controlled the stock of *Benson Bros.*, it would have to be found as a fact that John E. *Maloney* controlled his wife, and thereby, through her stock ownership, controlled *Benson Bros. Corp.*"

The facts of the present case call for the same reasoning and rule as was set forth in the *Maloney* case. It is the *fact* of ownership and control between the corporations which is decisive. The court below refused to indulge in a conclusive presumption in the *Maloney* case. There is an equally tenuous connection between the two corporations here involved. Since it was necessary to disregard their corporate entities in order to find that one controls the other, consistency required the same refusal in this case.

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<sup>4</sup> This opinion in action #334 Em. Ct. is not yet reported.

4. The decision of the court below is in conflict with the applicable decisions of the United States Circuit Courts.

The Circuit Courts have consistently applied the rules set forth in number two under this heading. The court of the eighth circuit summarized the applicable rules in *Commerce Trust Co. v. Woodbury*, 77 F. (2d) 478, 487, in these words:

“Few questions of law are better settled than that a corporation is ordinarily a wholly separate entity from its stockholders, whether they be one or more. (citing cases). . . . Likewise, we think it must be conceded that neither ownership of all of the stock of one corporation by another, nor the identity of officers in one with officers in another, creates a merger of the two corporations into a single entity, or makes one either the principal or agent of the other. . . . (citing cases)—But notwithstanding such situation and such intimacy of relation, the corporation will be regarded as a legal entity, as a general rule, and the courts will ignore the fiction of corporate entity only with caution, and when the circumstances justify it, and when it is used as a subterfuge to defeat public convenience, justify wrong, or perpetrate a fraud.”

Like rules have been announced and applied in the other circuits.

*Nichols and Co. v. Secretary of Agriculture*, 131 F. (2d)

651 (C. C. A. 1st);

*N. L. R. B. v. Timken Silent Automatic Co.*, 114 F. (2d)

449 (C. C. A. 2d);

*Ohio Tank Car Co. v. Keith Ry. Equipment Co.*, 148

F. (2d) 4, certiorari denied 326 U. S. 730, 66 S. Ct. 38 (C. C. A. 7th);

*Continental Oil Co. v. Jones*, 113 F. (2d) 557 (C. C. A. 10th);

*Press Co. v. N. L. R. B.*, 118 F. (2d) 937 (C. C. A. D. C.).

WHEREFORE it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the United States Emergency Court of Appeals should be granted.

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(9402)

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# In the Supreme Court of the United States

OCTOBER TERM, 1946

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No. 1107

GREENHOUSE BROS. & FINKELSTEIN, INC.,  
PETITIONER

v.

RECONSTRUCTION FINANCE CORPORATION

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES EMERGENCY COURT OF APPEALS

---

BRIEF FOR THE RESPONDENT IN OPPOSITION

---

OPINION BELOW

The opinion of the Emergency Court of Appeals (R. 12-18) is not yet reported.

## JURISDICTION

The judgment of the Emergency Court of Appeals was entered on February 5, 1947 (R. 18). The petition for certiorari was filed March 7, 1947. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 204 (d) of the Emergency Price Control Act.

**QUESTION PRESENTED**

Whether the Defense Supplies Corporation had authority to promulgate a regulation providing that slaughterers owned or controlled, directly or indirectly, by processors or purveyors of meat are not entitled to the subsidy, and to hold that under the regulation a slaughterer owned principally and controlled by three stockholders who also owned and controlled a processor was not entitled to the subsidy.

**STATUTES AND REGULATIONS INVOLVED**

The pertinent provisions of the Emergency Price Control Act of 1942, as amended, and of the controlling regulations are set forth in the Appendices, *infra*, pp. 14-20.

**STATEMENT**

In June 1943, as part of the President's hold-the-line policy (E. O. 9328, 8 F. R. 4681), the maximum prices of carcass beef and wholesale cuts of beef, were reduced approximately ten (10) percent. by order of the Economic Stabilization Director (Amendment No. 15 to RMPR 169, 8 F. R. 7675). This reduction was compensated for by subsidy payments made by Defense Supplies Corporation (later Reconstruction Finance Corporation) under its Regulation No. 3 (8 F. R. 10826).

This subsidy was found insufficient adequately to compensate non-processing slaughterers who derived no income apart from the sale of non-processed beef.

The Director of Economic Stabilization, by his directive of October 25, 1943, *infra*, pp. 14-17, therefore, provided for an additional subsidy of eighty (80) cents per cwt. to non-processing slaughterers of beef. It is this subsidy which is involved in this case. The directive stated that "6. Defense Supplies Corporation is directed to amend Regulation No. 3 (Livestock Slaughter Payments) in accordance with this Directive." Five days later, pursuant to this directive, Defense Supplies Corporation amended its subsidy regulation, *infra*, pp. 18-20. The pertinent portions of this amendment read as follows:

Section 14. Extra compensation for non-processing slaughterers of beef.

(a) Definitions.

(1) "Non-processing slaughterer of beef" means an unaffiliated slaughterer as hereinafter defined who during six consecutive months of 1942, sold, and who currently sells, 98% or more, measured in dressed carcass weight, of the total beef produced from cattle slaughtered by him in all his establishments, in the form of carcasses, wholesale cuts, boneless beef or ground beef.

(2) "Unaffiliated slaughterer" means a slaughterer who does not own or control a processor or purveyor of meat, and who is not owned or controlled by a processor or purveyor of meat. "Unaffiliated slaughterer" shall not include any institution, representative or agency of Federal, State, or local governments.

(3) "Processor or purveyor of meat" means a person who processes fresh beef or sells or dispenses fresh or processed meat or products containing meat, at wholesale or at retail, or in a hotel, restaurant or other eating establishment.

(4) "Own or control" means to own or control directly or indirectly a partnership equity or in excess of ten percent of any class of outstanding stock or to have made loans or advances in excess of five percent of the other person's monthly sales.

The petitioner claimed eligibility to receive the subsidy payable under this amendment (R. 3-6). Respondent denied the petitioner's eligibility upon the ground of petitioner's affiliation with a processor or purveyor of meat, basing the determination upon the following findings of fact (R. 1-3) :

"II. That Renee Packing Co., Inc. is a processor or purveyor of meat;

\* \* \* \* \*

IV. That Greenhouse Bros. & Finkelstein, Inc. is owned and controlled by the following officers and stockholders:

Officers: President: Paul Greenhouse; Vice President, Nathan Finkelstein; Sec. & Treas., William Greenhouse.

Stockholders: Total Shares Issued 614.

	<i>Shares</i>
William Greenhouse	144
Paul Greenhouse	129½
Nathan Finkelstein	134½
Rose Greenhouse	60
Estabel Greenhouse	74

	Shares
Fannie Finkelstein-----	70
Eli Gingold (atty.)-----	1
Jessie Hecker-----	1
 Total-----	 614

V. That Renee Packing Co., Inc. is owned and controlled by the following officers and stockholders:

Officers: President: Eli Gingold; 1st Vice Pres., William Greenhouse; 2nd Vice Pres., Nathan Finkelstein; Sec. & Treas., Paul Greenhouse.

Stockholders: Total Shares Issued 695.

William Greenhouse-----	23 1/3%
Paul Greenhouse-----	23 1/3%
Nathan Finkelstein-----	23 1/3%
 Total-----	 695

The petitioner thereupon filed a complaint in the Emergency Court of Appeals asking that the regulation and respondent's action thereunder be set aside, and on February 5, 1947, the court below dismissed the complaint (R. 12-18).

#### **ARGUMENT**

The petitioner's primary contention is that the subsidy regulation and respondent's determination thereunder unlawfully ignored the corporate entities of the two corporations involved. This contention has heretofore been fully considered in substance and found to be without merit. See *Atlantic Meat Co. v. Reconstruction Finance Corporation*, 155 F. 2d 533 (E. C. A.), certiorari denied October 14, 1946, No. 154 at this Term; *Gibbs*

v. *Defense Supplies Corporation, et al.*, 155 F. 2d 525 (E. C. A.), certiorari denied October 14, 1946, No. 147 at this Term; *Illinois Packing Co. v. Henderson*, 156 F. 2d 1000 (E. C. A.), certiorari denied November 18, 1946, No. 476 at this Term; and *Somerville Dressed Meat Co. v. Reconstruction Finance Corporation*, decided February 5, 1947, Emergency Court of Appeals No. 335.<sup>1</sup>

In each of the cited cases the provisions of the subsidy regulation here involved were considered and found valid. The *Atlantic Meat Company* case is particularly pertinent. There, as here, the ownership of the common stock of two corporations by a single owner was the basis for a finding of affiliation within the meaning of the subsidy regulation. In the *Atlantic Meat Company* case, the stock owner was a corporation. Here a group of individuals own a majority of the shares of the stock of one of the corporations and all of the shares of the stock of the other. The Emergency Court of Appeals properly refused to consider this distinction to be one of substance. The facts in the case at bar are more favorable to respondent's position than those in the *Atlantic Meat Company* case, for in the instant case the stock owners are also the principal officers of both

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<sup>1</sup> Copies of the opinion are being lodged with the Clerk of this Court.

corporations, while in the *Atlantic* case there was no overlapping of executive personnel.

Petitioner cites the case of *Maloney Packing Company v. Reconstruction Finance Corporation*, decided by the Emergency Court of Appeals on February 5, 1947, No. 334,<sup>2</sup> in support of its contention. In the *Maloney* case, the stock of one corporation was held by the wife of the owner of the stock of the second corporation. The Emergency Court of Appeals decided that the marital relationship between the respective owners of the two companies was not in and of itself sufficient to support a finding of affiliation, and remanded the matter for further proceedings. No conflict between the Emergency Court of Appeals' rulings in the *Maloney* case and in this case can be found without ignoring the obvious and substantial difference in the facts.

The meat subsidy program was terminated on October 14, 1946 and authority for its renewal does not exist. Whether the problems raised by this case would be presented by any new subsidy program if one should be adopted may well be doubted. The problems presented by this case are not of sufficient importance to warrant further review.

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<sup>2</sup> Copies of the opinion are being lodged with the Clerk of this Court.

**CONCLUSION**

It is respectfully submitted that the petition for a writ of certiorari should be denied.

GEORGE T. WASHINGTON,  
*Acting Solicitor General.*

JOHN R. BENNEY,  
*Attorney.*

JAMES L. DOUGHERTY,  
*General Counsel,*

E. A. STANSFIELD,  
*Assistant General Counsel,*

JOHN C. ERICKSON,  
*Counsel,*  
*Reconstruction Finance Corporation.*

APRIL 1947.

## APPENDIX A

The pertinent provisions of Section 2 (e) of the Emergency Price Control Act of 1942, 56 Stat. 26, 58 Stat. 632; 59 Stat. 306 (50 U. S. C. App., Supp. V, Sec. 902 (e)), reads as follows:

\* \* \* \* \*

(e) Whenever the Administrator determines that the maximum necessary production of any commodity is not being obtained or may not be obtained during the ensuing year, he may, on behalf of the United States, without regard to the provisions of law requiring competitive bidding, buy or sell at public or private sale, or store or use, such commodity in such quantities and in such manner and upon such terms and conditions as he determines to be necessary to obtain the maximum necessary production thereof or otherwise to supply the demand therefor, or make subsidy payments to domestic producers of such commodity in such amounts and in such manner and upon such terms and conditions as he determines to be necessary to obtain the maximum necessary production thereof: *Provided*, That in the case of any commodity which has heretofore or may hereafter be defined as a strategic or critical material by the President pursuant to section 5d of the Reconstruction Finance Corporation Act, as amended, such determinations shall be made by the Federal Loan Administrator, with the approval of the President, and, notwithstanding any other provision of this Act or of any existing law, such commodity may be bought or sold, or stored

or used, and such subsidy payments to domestic producers thereof may be paid, only by corporations created or organized pursuant to such section 5d; except that in the case of the sale of any commodity by any such corporation, the sale price therefor shall not exceed any maximum price established pursuant to subsection (a) of this section which is applicable to such commodity at the time of sale or delivery, but such sale price may be below such maximum price or below the purchase price of such commodity, and the Administrator may make recommendations with respect to the buying or selling, or storage or use, of any such commodity: *Provided, however,* That, with the exception of any commodity which prior to the effective date of his amendatory proviso has been defined as a strategic or critical material pursuant to section 5d of the Reconstruction Finance Corporation Act, as amended, no agricultural commodity or commodity manufactured or processed in whole or substantial part from any agricultural commodity intended to be used as food for human consumption, shall, for the purposes of this subsection, be defined as a strategic or critical material pursuant to the provisions of said section 5d of the Reconstruction Finance Corporation Act, as amended. In any case in which a commodity is domestically produced, the powers granted to the Administrator by this subsection shall be exercised with respect to importations of such commodity only to the extent that, in the judgment of the Administrator, the domestic production of the commodity is not sufficient to satisfy the demand therefor. \* \* \*

\* \* \* \* \*

## APPENDIX B

Section 2 (m) of the Emergency Price Control Act, as added by Section 102 of the Stabilization Extension Act of 1944, 58 Stat. 632, 50 U. S. C. App., Supp. V, Sec. 902 (m) reads as follows:

\* \* \* \* \*

(m) No agency, department, officer, or employee of the Government, in the payment of sums authorized by this or other Acts of Congress relating to the production or sale of agricultural commodities, or in contracts for the purchase of any such commodities by the Government or any department or agency thereof, or in any allocation of materials or facilities, or in fixing quotas for the production or sale of any such commodities, shall impose any conditions or penalties not authorized by the provisions of the Act or Acts, or lawful regulations issued thereunder, under which such sums are authorized, such contracts are made, materials and facilities allocated, or quotas for the production or sale of any such commodities are imposed. Any person aggrieved by any action of any agency, department, officer, or employee of the Government contrary to the provisions hereof, or by the failure to act of any such agency, department, officer, or employee, may petition the district court of the district in which he resides or has his place of business for an order or a declaratory judgment to determine whether any such action or failure to act is in conformity with the provisions hereof and otherwise lawful; and the court shall have jurisdiction to

grant appropriate relief. The provisions of the Judicial Code as to monetary amount involved necessary to give jurisdiction to a district court shall not be applicable in any such case.

## APPENDIX C

Section 2 of the Act of June 23, 1945, 59 Stat. 260, c. 193, reads as follows:

Any slaughterer who heretofore or hereafter shall have received extra compensation payments under Livestock Slaughter Payments Regulation Numbered 3 of Defense Supplies Corporation (adopted pursuant to directives of the Director of Economic Stabilization) when such slaughterer was not in a class eligible for such extra compensation payments, shall be relieved, in whole or in part, of obligations to repay the amount thereof and shall be entitled to receive, in whole or in part, the amount of such extra compensation payments repaid by such slaughterer to, or withheld by Defense Supplies Corporation on account of such extra compensation payments, to the extent that it is determined by the Director of Economic Stabilization, or any agency of the Government authorized by him, that it would be inequitable for Defense Supplies Corporation to require repayment by such slaughterer or to retain the amounts so repaid or withheld, provided such Director or agency also determines that such slaughterer believed reasonably and in good faith that he was eligible to receive such extra compensation payments: *Provided*, That any determination by such Director or agency under this section shall be reviewable by the Emergency Court of Appeals under such rules as such court may prescribe.

## APPENDIX D

The directive of the Economic Stabilization Director of October 25, 1943, 8 F. R. 14641, reads as follows:

### OFFICE OF ECONOMIC STABILIZATION

#### LIVESTOCK SLAUGHTER PAYMENTS

This directive is issued pursuant to the authority vested in me by the Act of October 2, 1942, entitled "An Act to amend the Emergency Price Control Act of 1942, to aid in preventing inflation and for other purposes," and by Executive Order No. 9250, October 3, 1942, and Executive Order No. 9328, April 8, 1943.

1. The purposes of this directive are to insure:

(a) That the livestock slaughter payments made with respect to cattle under Regulation No. 3 of Defense Supplies Corporation (Livestock Slaughter Payments) inure to the benefit of cattle producers;

(b) That such payments are made only to the extent necessary to maintain live cattle prices within a range consistent with the purposes of the stabilization and production programs;

(c) That such prices do not impose undue hardship upon any group of slaughterers whose output is needed to obtain the maximum necessary production; and

(d) That the available supplies of live cattle are equitably distributed among slaughterers and feeders.

2. It is hereby determined that the stabilization and production programs require the maintenance of live cattle prices within the following ranges:

Grade:	Price (per cwt., at Chicago)
Choice	\$15.00 to \$16.00
Good	14.25 to 15.25
Medium	12.00 to 13.00
Common	10.00 to 11.00
Cutter and canner	7.45 to 8.45
Bologna bulls	7.45 to 8.45

The Price Administrator and the War Food Administrator are directed to determine and publish, and to certify to Defense Supplies Corporation, live cattle prices at points other than Chicago which are in line with the foregoing Chicago prices.

3. There shall be deducted from the live-stock slaughter payments hereafter made to any slaughterer under Regulation No. 3 of Defense Supplies Corporation (Live-stock Slaughter Payments) the net amount, if any, by which the total of the prices paid by such slaughterer for all live cattle purchased during the month for which the payments are made either fell short of the total amount he would have paid at the lower of the applicable prices, or exceeded the total amount he would have paid at the higher of the applicable prices, set forth or provided for in paragraph 2, above.

The grade of live animals purchased by a slaughterer shall be determined on the basis of the carcass grade. The Price Administrator and the War Food Administrator are directed to determine and pub-

lish, and to certify to Defense Supplies Corporation, conversion factors for determining the dressed weight equivalents of live weights.

In the case of slaughterers who operate more than one plant, the amount of the payments and deductions to be made shall be determined separately for each plant.

4. The livestock slaughter payments hereafter made with respect to cattle under Regulation No. 3 of Defense Supplies Corporation (Livestock Slaughter Payments) to any slaughterer whose beef carcasses are graded by an official grader of the Food Distribution Administration shall be revised and computed on a grade basis as follows:

Grade:	Payments per live cut.
Choice	\$1.00
Good	1.45
Medium	.90
Common	.50
Cutter and Canner	.50
Bologna Bull	.50

Livestock slaughter payments made to slaughterers whose beef carcasses are not graded by an official grader of the Food Distribution Administration shall remain unchanged.

5. Slaughterers who during the year 1942, or a representative portion thereof, sold and who currently sell 98% or more of the total dressed carcass weight of cattle slaughtered by them in the form of carcasses, wholesale cuts, frozen boneless beef (Army specifications) (carcass equivalent) or ground beef, shall be paid in addition to the payments authorized by Regulation No. 3 of Defense Supplies Corporation (Livestock Slaughter Payments), the

amount of \$0.80 per cwt. of cattle slaughtered during the month for which such payments are made.

6. Defense Supplies Corporation is directed to amend Regulation No. 3 (Live-stock Slaughter Payments) in accordance with this Directive.

7. The War Food Administrator is directed as soon as practicable to institute a system of allocation of live cattle to slaughterers and feeders which is adequate to maintain an equitable distribution of available supplies.

8. The Secretary of Commerce is directed to determine on the basis of facts certified by the War Food Administration and the Office of Price Administration whether the effectuation of the expressed purposes of this directive require adjustments in, or additions to, the payments contemplated by this directive because of inequities resulting from differences in transportation costs.

9. This directive shall become effective immediately, except that paragraphs 3 and 4 shall become effective on December 1, 1943, and payments under paragraph 5 shall be made with respect to cattle slaughtered on and after November 1, 1943.

Issued this 25th day of October, 1943.

FRED M. VINSON,  
*Director.*

## APPENDIX E

### DEFENSE SUPPLIES CORPORATION AMENDMENT TO MEAT SUBSIDY REGULATION (9 F. R. 1820)

[Reg. 3, Amdt. 2]

#### PART 7003—LIVESTOCK SLAUGHTER PAYMENTS

##### EXTRA COMPENSATION FOR NON-PROCESSING SLAUGHTERERS OF BEEF

Pursuant to a directive issued by the Office of Economic Stabilization on October 25, 1943 (8 F. R. 14641), Regulation No. 3 of Defense Supplies Corporation is hereby amended by adding a new § 7003.14, as follows:

§ 7003.14 *Extra compensation for non-processing slaughterers of beef*—(a) *Definitions.* (1) “Non-processing slaughterer of beef” means an unaffiliated slaughterer as hereinafter defined who during six consecutive months of 1942, sold, and who currently sells, 98% or more, measured in dressed carcass weight, of the total beef produced from cattle slaughtered by him in all his establishments, in the form of carcasses, wholesale cuts, boneless beef or ground beef.

(2) “Unaffiliated slaughterer” means a slaughterer who does not own or control a processor or purveyor of meat, and who is not owned or controlled by a processor or purveyor of meat. “Unaffiliated slaughterer” shall not include any institution, representative or agency of Federal, State or local governments.

(3) “Processor or purveyor of meat” means a person who processes fresh beef or sells or dis-

penses fresh or processed meat or products containing meat, at wholesale or at retail, or in a hotel, restaurant or other eating establishment.

(4) "Own or control" means to own or control directly or indirectly a partnership equity or in excess of ten percent of any class of outstanding stock or to have made loans or advances in excess of five percent of the other person's monthly sales.

(5) "Beef" means meat derived from the carcasses of bovine animals which does not qualify as veal as defined in § 1364.470 (a) (3) of Revised Maximum Price Regulation No. 169 issued by the Office of Price Administration.

(6) "Cattle" means bovine animals, slaughter of which results in the production of beef.

(7) "Carcasses" means beef carcasses as defined in § 1364.455 (a) (8) of Revised Maximum Price Regulation No. 169 issued by the Office of Price Administration.

(8) "Wholesale cuts" means beef wholesale cuts as defined in § 1364.455 (a) (9) of Revised Maximum Price Regulation No. 169 issued by the Office of Price Administration.

(9) "Boneless beef" means the dressed carcass equivalent of beef covered by § 1364.452 (l), (m) and (n) of Revised Maximum Price Regulation No. 169 issued by the Office of Price Administration.

(10) "Ground beef" means the dressed carcass equivalent of ground beef as defined in § 1364.452 (p) (4) of Revised Maximum Price Regulation No. 169 issued by the Office of Price Administration.

(b) *Persons eligible for extra compensation.*

*Lippincott*

Any non-processing slaughterer of beef who files an application for payment under §§ 7003.1 through 7003.5 of this regulation may file a claim for extra compensation on account of cattle slaughtered on and after November 1, 1943, for any accounting period for which he files an application for payment under §§ 7003.1 through 7003.5.

(c) *Filing claims.* (1) Claims for extra compensation shall be filed in the same manner as, for the same period as, and with, the applications for payment provided for in §§ 7003.1 through 7003.5 of this regulation.

(2) If an applicant's accounting period does not begin on November 1, 1943, he may include in his claim for extra compensation for the first full accounting period beginning after November 1, 1943, the cattle slaughtered on and after November 1, 1943 and before the beginning of the next accounting period.

(d) *Payment of claims.* Defense Supplies Corporation will make payment on approved claims for extra compensation at the rate of .8 cents a pound on the same amount of live weight of cattle slaughtered on and after November 1, 1943, on which payments are made to the applicant under §§ 7003.1 through 7003.5 of this regulation. Payments will be made in the same manner and on the same terms as payments of applications under §§ 7003.1 through 7003.11 of this regulation.

(e) This section shall become effective as of November 1, 1943.

Issued this 30th day of October 1943.

GEORGE H. HILL, Jr.,  
*Executive Vice President.*

